



# TEXAS ETHICS COMMISSION

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OPINION COMMITTEE

August 29, 2002

*RQ-0601-JC*

FILE # ML-42774-02  
I.D. # 42774

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The Honorable John Cornyn  
Attorney General  
209 West 14th Street  
Austin, Texas 78711-2548

Dear General Cornyn:

As the Executive Director of the Texas Ethics Commission, I am writing to request a written opinion on the interpretation of Section 571.140, Government Code, as it applies to a complaint initiated by the Ethics Commission.

Sections 571.121 and 571.124, Government Code, grant the Ethics Commission the authority to hold hearings and initiate an investigation on its own motion. Section 571.140(a), Government Code, states in pertinent part:

proceedings at a preliminary review or informal hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

The law provides criminal penalties and civil liability if the Ethics Commission or commission staff discloses confidential sworn complaint information. Sections 571.140(b) and (c), Government Code; Ethics Advisory Opinion No. 8 (1992).

In discussing the procedure for handling complaints initiated by the Ethics Commission, the question arose as to whether, or to what extent, sworn complaint information that is currently in the commission's possession and that was provided in connection with a sworn complaint filed by an individual may be used in a commission-initiated complaint. Although Section 571.140(b), Government Code, provides that certain orders issued in connection with a sworn complaint may be

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The Honorable John Corn

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released if the Texas Ethics Commission finds that a violation occurred, that provision does not authorize the release of any documents or evidence considered in connection with that sworn complaint. Therefore, this question goes to the issue of whether information or evidence considered in a sworn complaint filed by an individual may be disclosed when the commission wants to use that information or evidence as the basis of a commission-initiated complaint.

Certain information is statutorily required to be in a sworn complaint, including documents or other material available to the complainant that are relevant to the allegation. Section 571.122, Government Code. The respondent is entitled to receive a copy of the sworn complaint, including all documents submitted with the complaint. Section 571.124(e), Government Code; Section 12.67, Ethics Commission Rules. If the information that is the basis for the commission-initiated complaint comes from evidence or documents related to a sworn complaint filed by an individual, the disclosure of that information to the respondent in the commission-initiated complaint, at least facially, appears to subject the person disclosing the information to both criminal and civil penalties. However, if the Ethics Commission is prohibited from disclosing that information to the respondent, the Ethics Commission would not be complying with the requirement to provide the respondent with copies of all documents considered to be a part of the complaint. Section 12.67, Ethics Commission Rules. More importantly, the respondent would not receive a copy of all the evidence being considered against him or her. If that is the result, it would appear that the commission may not consider the information at all.

Therefore, we are seeking your assistance in determining whether or not disclosing to the respondent, in a commission-initiated complaint, evidence and documents obtained in connection with other sworn complaints would subject the commission or its staff to the criminal and civil penalty provisions under Section 571.140, Government Code.

Please let me know if you have any questions about this opinion request.

Sincerely,

A handwritten signature in black ink that reads "Tom A" followed by a long horizontal line extending to the right.

Tom Harrison  
Executive Director

TH:TS:my